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Preventing Human Trafficking and Sexual Exploitation of Women and Girls: Proposed Modifications to CEDAW and the UN Trafficking Protocol

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To: Professor Maldonado
From: Yesenia Rodriguez
Date: May 3rd, 2011
Re: Final Draft

**Preventing Human Trafficking and Sexual Exploitation of Women and Girls: Proposed
Modifications to CEDAW and the UN Trafficking Protocol**

I. Introduction

Human trafficking and the sexual exploitation of women and girls has recently become a global issue.¹ In 2007, the estimated number of trafficked sex slaves world-wide was 1,243,050², and the profits from slave trading were estimated to be 599 million US dollars.³ At the international level, policies have been imposed to help combat trafficking, especially of women and children,⁴ but more needs to be done to prevent trafficking. This paper analyzes the relationship between female victims of sex trafficking and structural factors, such as poverty, gender roles, and the lack of equal opportunities for women and girls, which force them to become part of the underground sex trade.

¹ See HELI ASKOLA, *LEGAL RESPONSES TO TRAFFICKING IN WOMEN FOR SEXUAL EXPLOITATION IN THE EUROPEAN UNION 1* (Hart Publishing 2007) (discussing the transformation of human trafficking from a small problem to a legitimate concern).

² SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN DAY SLAVERY* 18 (Columbia University Press 2009). *But see* Cameron and Newman, note 10 *infra*, at 5 (“The US Department of State has estimated that 600,000-800,000 human beings are trafficked across borders each year; of these, approximately 80 per cent are women and girls and up to 50 per cent are minors”).

³ *Id.* at 20.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. Doc. A/RES/55/25 (Nov. 2, 2000). *Available at* <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> [hereinafter Palermo Protocol]

Many scholars have addressed the issue of human trafficking and the sexual exploitation of women and children.⁵ Most have argued that trafficking must be combated with strict laws and harsh punishments for the traffickers.⁶ Others have argued that lawmakers must take a human rights approach and do more for the victims, such as special protections and some form of rehabilitation.⁷ While these scholars address many causes of human trafficking, they fail to discuss meaningful preventative measures. This paper argues that parents, women, victims, and law makers must make an effort to free women from the psychological and opportunistic barriers caused by historical gender stereotypes. More specifically, this paper proposes specific modifications to international legislation, concerning human trafficking, which will implement effective preventative measures in addressing this global epidemic.

“Sex trafficking is a modern day form of slavery in which a commercial sex act is induced by fraud, force, or coercion, or in which the person induced to perform such act is under the age of 18.”⁸ “Sexual exploitation is defined as any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.”⁹ The international epidemic of sex trafficking and sexual exploitation affects mostly women and children because of the large demand for women and young girls in the sex industry.¹⁰ “The work is unattractive or unacceptable to many women and prostitutes frequently have a relatively

⁵ See Jonathan Todres *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT'L L. 1 (2010).

⁶ See Cameron & Newman, note 10 *infra*.

⁷ See Amiel, note 26 *infra*.

⁸ Department of Health and Human Services, Sex Trafficking Fact Sheet, http://www.acf.hhs.gov/trafficking/about/fact_sex.pdf (last visited March 20, 2011).

⁹ United Nations Sexual Exploitation and Abuse Policy. Available at <http://cdu.unlb.org/Policy/SexualExploitationandAbusePolicy.aspx> (last visited April 12, 2011).

¹⁰ See generally TRAFFICKING IN HUMANS: SOCIAL, CULTURAL, AND POLITICAL DIMENSIONS 88, 92 (Sally Cameron & Edward Newman eds., United Nations University Press 2008). (discussing “gendered” industries); see also Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* 43 (Martinus Nijhoff Publishers) (2006) (discussing the sex industry in Thailand, Poland, and the United Kingdom and how it was common for women to “comfort” soldiers during War).

short working life (youth is prized, some women become ill), so demand is seemingly endless.”¹¹ There are a number of ways in which women and girls are lured into this criminal underworld.¹² Victims of trafficking are, unfortunately, subject to a variety of physical and mental harms, such as rape and sexual abuse, beatings, debt-bondage, alcohol, and drug-addiction, starvation, Post Traumatic Stress Disorder (PTSD), and much more.¹³

To explore the above, the following is based on personal encounters of victims of human trafficking.

Julia was seventeen and pregnant. She had arrived in Rome from Romania at the age of fourteen. Standing next to her, Alyssia was the same age and born in the same town. They had travelled together with the help of a man who had promised work in a restaurant. Instead, they spent the last three years as street prostitutes in Rome. Their “protector” (pimp) was never far away. He kept them locked in an apartment during the day and brought them to the streets at night. If his girls did not secure twenty clients per night, he would not let them eat. Julia and Alyssia were not the only I “street girls”, Kara¹⁴ had met thirty other prostitutes, twenty-seven of whom admitted they were all under the age of eighteen, thus working illegally as prostitutes. None were from Italy; they were from Romania, Russia, Moldova, Albania, Poland, the Ukraine, Belarus, Latvia, and Bulgaria. While it is illegal to have children engage in prostitution, the minors could not go to the police because they are their main clients.¹⁵

Like the girls above, many women and girls become victims of sexual trafficking, not by choice, but because they are forced into the business. This paper seeks to address reasons why women and young girls fall victim to human trafficking for the purposes of forced prostitution and explore how society can prevent this from happening. This paper is organized as follows. Part II provides a basic introduction on the history of trafficking, (1) when it became a legitimate concern, (2) how it happens, (3) why it happens, (4) its effects on its victims. Part III discusses

¹¹ Cameron & Newman, *supra* note 10, at 31.

¹² Department of Health and Human Services, *supra* note 7. *See infra* Part II.

¹³ Department of Health and Human Services, *supra* note 7.

¹⁴ *See generally* KARA, *supra* note 2. (story as told by Kara)

¹⁵ KARA, *supra* note 2, 83-85.

the structural factors related to trafficking in more detail. This section aims to illustrate the root causes of trafficking and how they are interrelated. Part IV introduces the several responses to human trafficking and the sexual exploitation of women and girls. This part focuses mainly on two legislations, (1) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and (2) The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially of Women and Children, supplementing the United Nations Convention Against Organized Crime (The Palermo Protocol). This section also recognizes early international policy as it helped the advancement of current international treaties. Part V examines how lawmakers have failed to effectively address and implement the root causes of trafficking. This section discusses how current legislation is problematic and ineffective by mainly focusing on harsh punishments of the criminals involved and rehabilitation of the victims. It recognizes the importance of modern day international treaties. For example, criminalizing trafficking may have a deterrent effect on the perpetrators, and rehabilitating victims strives to empower victims as well as prevent re-victimization. Part VI argues that the law must shift its focus from punishment of traffickers to the prevention of trafficking. It acknowledges that prevention of trafficking may not work alone and therefore appreciates current laws. However, it concludes that a more comprehensive solution to sex trafficking must include a larger focus on the prevention and shielding of females from vulnerability. Countries need to address ways to minimize structural factors at the familial, communal, and state levels, that contribute to the sexual exploitation of women and girls. Part VII concludes this article by emphasizing the importance of a change in legislation. If efforts to modify legislation are not taken, the sale of women and girls in the underground sex trade will continue.

II. The Development of Trafficking

Human trafficking in woman and children is an epidemic that has “transformed from a relatively marginal ‘non-issue’ to a legitimate concern since the 1900’s.”¹⁶ This section addresses the basics of trafficking, when it became a major problem, how traffickers lure their victims, and the structural factors that tend to make women and girls vulnerable to sex trafficking.

The trafficking of females is a problem that has been around since the beginning of time.¹⁷ However, it was not until the 1800’s, around the time of abolition,¹⁸ that trafficking of women was seriously recognized. Today, modern day trafficking has developed into a global phenomenon where women and girls are being forced into prostitution.¹⁹

There are three ways in which traffickers procure women and girls: (1) falsely promise unemployed women employment in another country, (2) buy women from a family member, and (3) kidnap women.²⁰ This paper focuses mainly on the first and second method and addresses ways to alleviate the main factors which cause women to become vulnerable to these schemes. Most female trafficking victims, like Julia and Alyssia²¹, are lured by false promises of another job, such as a nanny or waitress, because they have few options and little hope for economic empowerment in their countries of origin.²² The second method is common amongst young

¹⁶ ASKOLA, *supra* note 1, at 1.

¹⁷ See, e.g., REV. WILLIAM H. KEELER, GOOD NEWS BIBLE: TODAY’S ENGLISH VERSION 76 (Catholic Bible Press) (1992) (Exodus 21 discusses the treatment of slaves, section 7 specifically states “If a man sells his daughter as a slave, she is not to be set free, as male slaves are).

¹⁸ See *infra* Part III.

¹⁹ KARA, *supra* note 2.

²⁰ See generally Stacey Antimone, *Sexual Trafficking: The United States’ Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT’L L. REV. 149, 151-53 (2000) (discussing the several ways in which women are trafficked).

²¹ See *supra* Part I. See also KARA, *supra* note 2, at 83-85.

²² See Janie Chuang, *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 69 (1998).

girls.²³ Many poor families will sell their daughters in hopes that they will work in other countries and send money home.²⁴ “A jittery young woman name Bridgett, who was pressured into sex slavery because of remittances sent to her parents, said ‘we are like slot machines to our families.’”²⁵

The methods traffickers use to procure woman and girls can be attributed to a number of societal issues faced world-wide, particularly poverty, sex discrimination, domestic violence, sexual abuse, and gender stereotypes and inequalities, most of which are interrelated.²⁶ “Such factors render women particularly susceptible to trafficking crimes because of the feminization of poverty and socio-economic gender imbalances.”²⁷ The lack of equal opportunity for women and girls leads to little or no education, which then results in limited job opportunities.²⁸ Consequently, an overwhelming portion of women and girls, world-wide, suffer from poverty. As a direct result, the vast majority of females in this situation become vulnerable, and in desperation accept any opportunity to make a living.²⁹

Victims of sex trafficking suffer a great deal of physical and psychological harms.³⁰ Trafficked women for the purposes of forced prostitution are placed in a position of

²³ KARA, *supra* note 2, at 8.

²⁴ KARA, *supra* note 2, at 8; *See also* Antimone, *supra* note 19, at 152-53 (describing an instance where a husband sold his wife into sex slavery); *See, e.g.*, OBOKATA, *supra* note 10, at 44 (“In Thailand selling of women and children for prostitution to support their family has been tolerated and for a long time as part of Thai custom”).

²⁵ KARA, *supra* note 2, at 8.

²⁶ *See* SILVIA SCARPA, *TRAFFICKING IN HUMAN BEINGS* 12-13 (Oxford University Press) (2008), *available at* <http://ezproxy.shu.edu/login?url=http://dx.doi.org/10.1093/acprof:oso/9780199541904.001.0001>; *see also* Alexandra Amiel, *Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation*, 12 *BUFF. HUM. RTS. L. REV.* 5, 7 (2006) (arguing that trafficking can be analogized to a market place with elements of supply and demand, as well as “push” and “pull” factors). *See infra* Part III.

²⁷ Amiel, *supra* note 26, at 7.

²⁸ *See* Cameron & Newman, *supra* note 10, at 88 (“The intersection of poverty and gender is felt in homes, as parents are forced to choose which of their children to educate and which to have at home to assist with labour”); *See also* Obokata, *supra* note 10, at 44 (discussing “both in Thailand and Poland, a lack of employment and educational opportunities for women have made them susceptible to exploitation by traffickers”).

²⁹ *See* Cameron & Newman, *supra* note 10, at 38 (discussing how economic equality “ensures a supply of desperately poor women and girls willing to do anything to survive”).

³⁰ *See* Antimone, *supra* note 19, at 153.

subordination and subject to physical beatings and sexual abuse.³¹ “Some trafficked women are ‘subject to starvation, forced use of drugs, and alcohol, burning with cigarettes, isolation in dark rooms, being beaten and threats to themselves or their families’.”³² Many victims of trafficking also fear seeking help from authorities because they are treated as criminals since all of their documentation is usually destroyed or hidden during the trafficking process.³³

III. Factors Related to Trafficking

Claude Lévi Strauss once said, “Men can co-exist by denying each other a comparable degree of humanity, and thus establishing a system of subordination.”³⁴ This system of subordination has contributed to the “range of factors that combine to enable individuals and organizations to traffic vulnerable women and girls through the use of deception, coercion, and exploitation.”³⁵ There is a significant interaction between a variety of factors and trafficking.³⁶ This section aims to introduce the main causes of trafficking and how they are interrelated.

A. Poverty

In the late 1900’s, poverty levels increased as a direct result of economic globalization.³⁷ Between the year 1990 and the year 2000 Eastern and Central Europeans and Asians, suffering from poverty, were living on less than three dollars a day as a result of economic globalization.³⁸ The poor economic status caused significant decreases in populations, one half of the individuals

³¹ Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN’S L.J. 137, 139 (2004).

³² *Id.*

³³ *Id.*

³⁴ Kara, *supra* note 2, at 1.

³⁵ Cameron & Newman, *supra* note 10, at 21.

³⁶ *Id.*

³⁷ See generally KARA, *supra* note 2, at 25 (defining economic globalization as “the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and people across borders”).

³⁸ KARA, *supra* note 2, at 27.

being trafficked.³⁹ For example, Ukraine's population dropped by 1.6 million and over five hundred thousand individuals were trafficked abroad.⁴⁰ "Shrewd traffickers preyed on this desperation, duping millions into modern-day slavery."⁴¹

"It is broadly accepted that poverty is one of the key factors which places people at risk of human trafficking."⁴² There is a direct correlation between poverty and lack of opportunities.⁴³ Those suffering from poor economic conditions are left with few options.⁴⁴ Poor women and girls are vulnerable to false promises of a job in another location because they are continuously seeking to survive.⁴⁵

Poverty affects every aspect of trafficking, both at the victimization and criminal network levels. For example, Cameron and Newman rightly point out that "weak national economies and poor wages in the public sector may motivate corruption among public officials, increasing the ease in which criminal networks can operate."⁴⁶ Consequently, authorities submit to "wilfull blindness" of the issue and make extra money to help facilitate the trafficking of women and girls. Some even use the sexual services of trafficked women.⁴⁷ The result of corruption and police facilitation in sex trafficking is that women and girls who are enslaved fear going to the police. Thus, reports of trafficking are low, while victimization is still high.⁴⁸

B. Gender

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Cameron & Newman, *supra* note 10, at 22.

⁴³ *See Id.* at 22 (stating that poverty places people in a situation where they have few alternatives).

⁴⁴ Chuang, *supra* note 21, at 69.

⁴⁵ Cameron & Newman, *supra* note 10, at 38.

⁴⁶ *Id.* at 22.

⁴⁷ *See supra* Part I (the story of Julia and others).

⁴⁸ *See infra* Part V (discussing report and prosecution rates of alleged traffickers).

Sex trafficking has a discriminatory impact on the female population.⁴⁹ While both men and women can be victims of trafficking, the majority of victims tend to be female. “The International Labor Organization calculates that approximately 2.4 million persons are trafficked each year; 43% for commercial sexual exploitation, of which 98% are women and girls.”⁵⁰ This is, in part, due to historical gender roles and stereotypes. The term gender refers to the social and cultural construction of human beings.⁵¹ Historically, and among several cultures world-wide, women are treated as the property of men and the mothers of children, bound to the domestic sphere, thus creating a system of subordination.⁵²

The belief that women are an inferior sex has resulted in a global lack of equal opportunity available to women. “The majority of the world’s poor are women.”⁵³ This is mainly due to child rearing, and the lack of education and employment opportunities available to women. Today, more than 37 million Americans are living in poverty; more than half are women.⁵⁴ Poverty rates in women during child bearing years, typically 18 through 24, significantly increase.⁵⁵ “20.6 percent of women at that age are poor, compared to 14.0 percent of men.”⁵⁶ Because women are recognized as caretakers, boys are sent to school and men to work. Consequently, women and girls are expected to take care of the home. The result is a lack of equal educational opportunity for females. “About 72 million children of primary school age in

⁴⁹ See generally Cameron & Newman, *supra* note 10, at 37 (discussing how trafficking operates in a highly gender-targeted way).

⁵⁰ Vivian Waisman, *Human Trafficking: State Obligations to Protect Victims’ Rights, the Current Framework and a New Due Diligence Standard*, 33 HASTINGS INT’L & COMP. L. REV. 385, 390 (2010).

⁵¹ *Id.* at 25.

⁵² KATHARINE T. BARTLETT ^ DEBORAH L. RHODE, *GENDER AND LAW* (5th ed. 2010).

⁵³ Cameron & Newman, *supra* note 10, at 38.

⁵⁴ See ALEXANDRA CAWTHORNE, CTR. FOR AMERICAN PROGRESS, *THE STRAIGHT FACTS ON WOMEN IN POVERTY*, 1 (2008), http://www.americanprogress.org/issues/2008/10/pdf/women_poverty.pdf (discussing women in poverty).

⁵⁵ *Id.* at 1.

⁵⁶ *Id.* at 1.

the developing world were not in school in 2005; 57 percent of them were girls.”⁵⁷ Unemployment rates for women in Eastern and Central Europe continue to increase, while the unemployment rate for men has decreased.⁵⁸ For example, in 1996, 70 to 80 percent of women in Ukraine were unemployed, the majority of whom had college degrees.⁵⁹

Gender roles play a huge part in trafficking for the purpose of forced prostitution. Gender affects trafficking because “most industries into which people are trafficked are highly gendered.”⁶⁰ The term gendered industries refer to the idea that specific industries are male or female dominated. For instance, women are trafficked into domestic work and sex work because of the gendered skills required in those industries, such as being gentle, caring, and paying attention to detail.⁶¹ Traffickers use gender roles and the gendered makeup of industries to their advantage.⁶² In many instances, traffickers will deceive victims by offering them a job in domestic work (i.e., a waitress or nanny), while they are actually recruiting for a job in prostitution, which is a highly gendered industry.⁶³

C. Prostitution

Historically, prostitution was seen as an immoral, but necessary evil.⁶⁴ Consequently, a system of regulation was put into effect which established licensed brothels to manage

⁵⁷ ANUP SHAH, GLOBAL ISSUES, POVERTY FACTS & STATS (2010), *available at* <http://www.globalissues.org/article/26/poverty-facts-and-stats>

⁵⁸ See Cameron & Newman, *supra* note 10, at 38-39 (discussing the unemployment rates in Moldova between 1994 and 1997).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ ASKOLA, *supra* note 1, at 22.

prostitution as a necessary evil.⁶⁵ The regulation aimed to control prostitution for the purpose of preserving public health, while still serving the “biological needs of men.”⁶⁶

Regulation of prostitution spawned a huge debate. “Abolitionism arose in the late 1800’s in response to the regulatory approach to prostitution.”⁶⁷ Proponents of abolitionism, called neo-abolitionists, support the idea that prostitution is a form of violence against women, which is exploitative and disgraceful and should be abolished.⁶⁸ Neo-abolitionists viewed regulations on prostitution as “enforcing a double moral standard, relieving men of the duty of sexual abstinence and condemning prostitutes as social outcasts.”⁶⁹ They believe that women cannot consensually engage in sex work because “women who choose prostitution suffer from the inability to recognize their own oppression.”⁷⁰ Those opposed to abolitionism, called non-abolitionist, distinguish between sex trafficking and prostitution.⁷¹ While non-abolitionist agree that women can voluntarily engage in sex work and should not be punished, they advocate that “where trafficking exists it should be punished.”⁷²

“The sex industry has gone global and increasing numbers of women from developing countries are being recruited into it.”⁷³ The sex industry produces huge profits for those in control, therefore it is the perfect motivation for criminal networks.⁷⁴ While some argue that trafficking and prostitution are not directly related⁷⁵, the sex industry and its profits make it

⁶⁵ Alison Cole, *Reconceptualizing Female Trafficking: the Inhuman Trade in Women*, 26 WOMEN’S RTS. L. REP. 97, 98 (2005)..

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1664 (2010); See also Cole, *supra* note 63, at 99.

⁶⁹ Cole, *supra* note 63, at 98-99.

⁷⁰ Chuang, *supra* note 66, at 1664-65.

⁷¹ *Id.* at 1671.

⁷² See *Id.* at 1670-71 (discussing the several views of non-abolitionists).

⁷³ *Id.* Cameron & Newman, *supra* note 10, at 31.

⁷⁴ *Id.*

⁷⁵ See *Id.* at 32 (arguing that “while the sex industry is an enormous driver of trafficking the two are not inextricably linked”).

explicit connection between trafficking and exploitation of prostitution.”⁸⁹ The Convention criminalized the procurement of women for the purpose of forced prostitution irrespective of consent.⁹⁰ Like other earlier international treaties concerning the trafficking of women and girls, the 1949 Convention fails to provide a specific definition of trafficking.⁹¹ However, unlike earlier agreements, the Convention made its primary focus punishment and victim rehabilitation.⁹²

Early lawmaking efforts made it obvious that human trafficking continued to be a growing concern. However, these laws were lacking. For one, it failed to specifically define any relevant terms, such as trafficking, and at the least immoral purposes. Specifically, the 1949 Convention is cursed.⁹³ While it mentions the issue of brothels, which was never mentioned in previous legislation, it adopts an abolitionist approach to prostitution which is not widely accepted.⁹⁴ These early efforts were simply not enough.

B. *Modern Day Legislation*

Modern day notions on trafficking have taken a different approach in addressing the issue.⁹⁵ “As knowledge of the subject matter deepened, a wide variety of views on, and definitions of, trafficking have been advanced by different actors.”⁹⁶ Today, two international treaties play a significant role in combating sex trafficking of women and girls. One takes a criminal law approach and the other takes a human rights approach.

The Palermo Protocol

⁸⁹ OBOKATA, *supra* note 10, at 16.

⁹⁰ Chuang, *supra* note 22, at 75.

⁹¹ *Id.* at 75.

⁹² See 1949 Convention, *supra* note 87. See also Bruch, *supra* note 84, at 9-10 (discussing the aims of the 1949 Convention).

⁹³ Roza Pati, States’ Positive Obligations with Respect to Human Trafficking: the European Court of Human Rights Breaks New Ground in *Rantsev v. Cyprus and Russia*, 29 B.U. Int’l L.J. 79, 110 (2011).

⁹⁴ See 1949 Convention, *supra* note 22, at art. 2. See also Pati, *supra* note 93, at 109-10.

⁹⁵ OBOKATA, *supra* note 10, at 18.

⁹⁶ *Id.*

In November 2000, the U.N. General assembly adopted the Palermo Protocol.⁹⁷ It was the first international agreement to define trafficking.⁹⁸ Article 3 of the Palermo Protocol defines “trafficking in persons” as:

the recruitment, transportation transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or other practices similar to slavery, servitude, or removal of organs.⁹⁹

The Palermo Protocol significantly states that consent is irrelevant if any of the above methods are used in the procurement of potential victims, including women and girls.¹⁰⁰ It also provides that the list above is non-exhaustive, meaning procurement of potential victims can take place in a number of ways other than those specifically stated in the treaty.¹⁰¹

Article 2, of the Protocol states its purposes as follows:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.¹⁰²

⁹⁷ Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. INT’L L.J. 473, 473 (2003).

⁹⁸ Amiel, *supra* note 26, at 25.

⁹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. Doc. A/RES/55/25 (Nov. 2, 2000). Available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Cinvention/TOCebook-e.pdf> [hereinafter Palermo Protocol]

¹⁰⁰ *Id.* at art. 3.

¹⁰¹ *Id.*

¹⁰² *Id.* at art. 2.

The Palermo Protocol provides that “each State Part shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3, when committed intentionally.”¹⁰³ Concerning the protection of victims, Article 6 contends that States Parties shall do everything in their power to keep the identity of victims a secret, provide victims with information about legal proceedings, if any, and assist victims with physical, psychological, and social recovery.¹⁰⁴ Articles 9 and 10 of the Protocol address the issue of prevention.¹⁰⁵

CEDAW

In 1979 CEDAW was adopted as an international instrument in an attempt to suppress all forms of discrimination against women.¹⁰⁶ The treaty defines “discrimination against women” as

any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁰⁷

CEDAW specifically provides that measures to eliminate discrimination against women in the fields of employment, health benefits, marriage, education, and politics must be implemented.¹⁰⁸ The legislation establishes a Committee on the Elimination of Discrimination Against Women [hereinafter the Committee].¹⁰⁹ The Committee is responsible for the enforcement of the provisions of CEDAW in the countries in which the treaty was adopted.¹¹⁰

¹⁰³ *Id.* at art. 5.

¹⁰⁴ *Id.* at art. 6.

¹⁰⁵ See Part V *infra*.

¹⁰⁶ Cole, *supra* note , at 100.

¹⁰⁷ Convention on the Elimination of All Forms of Discrimination Against Women, *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> [hereinafter CEDAW].

¹⁰⁸ *Id.* at Part II – III.

¹⁰⁹ *Id.* at art. 17.

¹¹⁰ *Id.*

Article 6 specifically refers to trafficking.¹¹¹ It briefly states:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.¹¹²

CEDAW not only prohibits trafficking, but necessarily provides that the problem needs to come to an end. The international treaty also mentions one of the key factors related to sex trafficking, prostitution, and poses the idea that it must be controlled.

V. Lack of Effective Response

International law has properly expanded its scope in the fight against the elimination of trafficking. Early legislation has focused on collecting data to understand trafficking and its causes.¹¹³ Modern day legislation has focused primarily on punishment and protection of trafficking victims, and has briefly mentioned prevention.¹¹⁴ However, trafficking of women and girls is still a huge problem.¹¹⁵ The problem can be attributed to lawmakers' failure to effectively implement, address, and focus on the root causes of trafficking. This sector examines the criminal law approach as well as the victim protectionist measures which have been implemented by legislation. This section also discusses the failure of modern day legislation to successfully implement pre-emptive procedures in response to the sex trafficking epidemic and the effect the lack of response has had on trafficking.

A. *Criminalization of Trafficking and the Protection of Victims*

¹¹¹ CEDAW, *supra* note 104, at art 6.

¹¹² *Id.*

¹¹³ See Part IV.A *supra*.

¹¹⁴ See Part IV.B *supra*.

¹¹⁵ See Part III.B *supra*.

One of the main reasons for criminalizing behavior is to deter crime.¹¹⁶ Therefore, criminalizing trafficking and applying harsh punishments to perpetrators may have a deterrent effect on the crime. However, “by labeling trafficking as a criminal offense, it becomes associated with, and sometimes limited to, the prosecution of organized crime.”¹¹⁷ This becomes problematic because the law then focused on “changing legislation, imposing punishments on offenders, strengthening police cooperation, and improving the number of prosecutions and convictions of traffickers.”¹¹⁸ The harsh reality is that associating trafficking with criminal law inhibits lawmakers from focusing on the real problem.

Prosecution rates for traffickers are often extremely low.¹¹⁹ For example, in 2004, Slovenia had nine ongoing trafficking investigations, of which only one prosecution resulted and no convictions were obtained.¹²⁰ In Greece, law enforcement arrested and charged 352 perpetrators with trafficking offenses, of which only 94 were prosecuted and very few convictions were obtained.¹²¹ While criminalizing trafficking is important in the fight against trafficking, the numbers above show it is not the only answer, after all trafficking is not just a criminal law issue.

“The criminal law approach to trafficking does not serve the interest of the victim.”¹²² This approach fails to realize that trafficking victims are often re-victimized.¹²³ For instance, women who are trafficked are often arrested when they attempt to report the crime because they do not have proper paper work and are considered to be in the country illegally. This methodology also

¹¹⁶ JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 35, (5th ed. 2007)

¹¹⁷ Amiel, *supra* note 26, at 27.

¹¹⁸ *Id.*

¹¹⁹ *See generally* Amiel, *supra* note 26, at 30 (discussing prosecution rates in various Western European Countries).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Amiel, *supra* note 26, at 33.

¹²³ *Id.*

fails to recognize the issue of corruption. Corruption not only enables traffickers, but it dissuades women and girls from reporting.

B. *Problems with the Palermo Protocol*

The scope of the Palermo Protocol is not broad enough.¹²⁴ It “only applies to those situations that are associated with an organized criminal group since the Protocol is intended to supplement the UN Convention against Organized Crime.”¹²⁵ By definition it does not apply to situations where a female gives consent. However, the Palermo Protocol does not define meaningful consent.

The Palermo Protocol consists of 20 articles.¹²⁶ Only two provisions discuss the prevention of trafficking.

Article 9 states:

States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children from re-victimization.

States parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

Policies, Programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of society.

States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.

¹²⁴ See Amiel, *supra* note 26, at 28.

¹²⁵ *Id.* at 28-29.

¹²⁶ See Palermo Protocol, *supra* note 99.

States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.¹²⁷

Article 10 discusses how to keep record of information pertaining to trafficking and how to train law enforcement to effectively combat the issue of trafficking.¹²⁸

In addition to its limited scope, the Palermo Protocol contains broad guidelines for state parties to follow in their efforts to combat trafficking. The effect is that, in practice, far reaching suggestions will not work in successfully attacking the trafficking of women and girls for the purpose of forced prostitution. It is respected that at the international level it is difficult to provide specific guidelines for States Parties, however broad guidelines will not work.

C. *Problems with CEDAW*

The major problem with CEDAW is that its provisions, specifically article 6¹²⁹, are ambiguous.¹³⁰ It has been widely criticized for its failure to define appropriate measures to be taken with respect to the fight against trafficking of women and girls.¹³¹ There is no doubt that the adoption of CEDAW is a major development of international women's rights, however it is a tool which needs more clarity.

Another problem with CEDAW is that the committee established to enforce its provisions only meets once every four years. This puts women's rights on the "back burner", and refuses to

¹²⁷ *Id.* at Art. 9.

¹²⁸ *Id.* at Art. 10.

¹²⁹ See Part IV.B, *supra*.

¹³⁰ See Amiel, *supra* note 26, at 35-36.

¹³¹ *Id.*

recognize that women's rights are being violated every day through trafficking for the purpose of forced prostitution.¹³²

D. *The Effect*

Lack of an effective response on trafficking has resulted in the issue merely becoming a larger concern throughout the years and the number of victims piling up, while prosecution and conviction rates are still low. For instance, from 2006 to 2007 the estimated increase of sex trafficking victims was about 43,050.¹³³ This makes it clear that although current legislation has been imposed, in practice it is not working. Something more must be done to prevent the number of trafficking victims, especially women and girls, from increasing.

VI. Proposed Modifications

"Preventative measures call on state parties to develop policies to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, and lack of equal opportunity."¹³⁴ A comprehensive approach to the issue of human trafficking requires much detail and a focus on ways to eliminate the root causes of trafficking. This section maintains that international attempts to reduce the factors related to sex trafficking must be dealt with in a more specific way. This segment proposes several suggestions on how to change current law. The result is creating a long term goal of reducing and eliminating the factors that create a system of subordination amongst women and men.

The structural factors discussed in Part III (above) begin at a familial and societal level. Over time they have developed into an overwhelming global issue. The priority of legislation should

¹³² See Amiel, *supra* note 26, at 35 (arguing that trafficking violates a woman's right to liberty and security of person, self-determination, education, family life, safe housing, privacy, and the highest attainable standard of health).

¹³³ Kara, *supra* note 2, at 18.

¹³⁴ Abramson, *supra* note 97, at 478.

be to eliminate these factors, specifically at the level in which they began (i.e., the system of subordination beginning at the familial level with the idea that women are caretakers and men are workers). The problem with current treaties is that they are too broad and too lax. This results in “wiggle room” for States Parties to adopt policies and programs that meet the standards of the international policies, but in practice serve no significant purpose in the fight against trafficking of women and girls. International responses to trafficking of women and girls need to be dealt with in a delicate, but effective matter.

To illustrate my position, the following are proposed modifications to current law. First, the Palermo Protocol must define relevant terms. The Protocol takes the initiative to define trafficking.¹³⁵ However, it fails to define other relevant terms, such as consent.

Proposed definition:

For the purposes of this section, consent must be meaningful.

“Meaningful consent” is defined as a person’s free will to engage in the conduct described by the alleged perpetrator. The person willing to engage in the conduct must be aware of all the consequences of said conduct. In cases where there is no perpetrator consent is meaningful if the person’s free will is not influenced by respective living conditions, such as poverty, and lack of employment or educational opportunities.

The above proposed modification would be applied to Article 3 of the Palermo Protocol. It enhances the idea that one may freely choose to engage in specific conduct of their own choice, specifically sex work. However, it recognizes that free will is influenced by many uncontrollable factors.

This provision is imperfect, and it is respected that it may be subjected may criticism. For example, it would be subject to the ongoing debate concerning consent and prostitution.¹³⁶ On the one hand, several feminists argue that sex work is an integral part of women’s sexual

¹³⁵ See Part IV.B *supra*; See also Palermo Protocol, *supra* note 99, at art. 3.

¹³⁶ See Balos, *supra* note 31 (discussing consent and prostitution).

autonomy, and therefore a woman can freely consent to engage in prostitution and sex work of the like.¹³⁷ To the other extent, other feminists argue that women cannot consensually participate in sex work because the decision to engage in such work is influenced by outside factors, thus it is a form of violence against women and rejects the idea of gender equality.¹³⁸

Next, modern day policies must be specific in providing guidelines for States Parties. The Palermo Protocol correctly implements prevention in its approach to the battle against trafficking.¹³⁹

Proposed modification to Article 9, Section (1) (a)-(b) of the Palermo Protocol

States Parties are required to establish comprehensive policies, programmes, and other measures

- (a) To prevent and combat trafficking in persons especially of women and girls
- (b) Measures shall include, but are not limited to the following:
 - a. Programs concerning female empowerment
 - b. Societal efforts to educate families together (both men and women) about equal rights and the abuse subjected to females at the hands of traffickers.
 - c. Government programs which provide financial support to needy families.
 - d. Policies which punish men for the unequal treatment of women.
 - e. Programs that train women in a variety of work options, including those that have been typically for men.

A provision such as this one gives States Parties specific guidelines to follow in adopting anti-trafficking legislation. It ensures that provisions of other policies will have the same goals, that is to effectively prevent trafficking in the future. It is understood that this recommendation

¹³⁷ Balos, *supra* note 31, at 164.

¹³⁸ *Id.* at 164.

¹³⁹ Palermo Protocol, *supra* note 99, at art. 3.

may be subjected to a number of criticisms. For example, States Parties may feel as though they will lose the freedom to legislate because they are adopting terms already set out by the UN.

Finally, meeting requirement established in CEDAW is problematic and needs to be amended. Even if it is typical for policy making to take longer than a year, meeting requirement does not make the rights of women a priority.

Proposed modification:

The committee established under this Convention is required to meet annually to examine existing policies and the effect of the existing policies in the country. If upon examination the existing policies have had little to no effect, the UN is required to make further suggestions.

It is likely that this proposed modification would be considered too stringent on States Parties' political agenda. However, it is important that lawmakers make it clear that equality for women is an important issue that cannot be ignored. More specifically, it cannot be ignored because gender inequality is a root cause of trafficking and any legislation which speaks to this issue is a matter of high importance.

VII. Conclusion

Trafficking of women and girls for the purpose of forced prostitution is a global phenomenon of high importance. Thousands of women are coerced across borders due to lack of opportunities in their communities and they are sold as sex slaves. While international efforts to reduce the problem are theoretically on point, they fail in practice. Consequently, sex trafficking of women and girls is still a thriving epidemic.¹⁴⁰

International legislation must adopt a more comprehensive approach to attack the sex trafficking dilemma taking place world-wide. The above analysis shows that current legislation has proven ineffective. The United Nations must lead as an example and adopt more specific

¹⁴⁰ *Supra*, Part I and III.

provisions focusing on ways to relieve poverty, especially among the female population, and open up doors that give women equal opportunity. State parties to International Agreements must adopt specific preventative measures which, not only empower women and girls, but also educate men and boys on the issues of trafficking and gender inequality. Once the psychological barriers of women and girls are broken down, the men and boys will hopefully adjust to modern day reality – that both men and women deserve equal treatment and protection under the law.

